



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 10 2020

REPLY TO THE ATTENTION OF

WP-16J

Darin LeCrone, Manager
Industrial Unit, Permits Section
Division of Water Pollution Control
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Re: U.S. Environmental Protection Agency Review of NPDES General Permit for Concentrated Animal Feeding Operations, ILA01

Dear Mr. LeCrone:

The U.S. Environmental Protection Agency has reviewed the pre-public notice National Pollutant Discharge Elimination System (NPDES) General Permit for Concentrated Animal Feeding Operations (Permit) that was submitted to EPA on November 1, 2019 and the associated pre-public notice public notice/fact sheet that was submitted to EPA on December 5, 2019. As discussed during a call between yourself and my staff on January 24, 2020, some changes to the Permit and Public Notice/Fact Sheet are necessary to ensure conditions of the Permit are consistent with state and federal requirements. Enclosure A identifies the changes you discussed with my staff on January 24.

If the changes discussed during the January 24 call are incorporated into the Permit and Public Notice/Fact Sheet, EPA would not object to issuance of the Permit. However, our position could change if any of the following occurs:

- a. Prior to the actual date of issuance of a Proposed Permit, an effluent guideline or standard is promulgated which is applicable to the permit and which would require revision or modification of a limitation or condition set forth in the Draft Permit;
- b. A variance is granted, and the Permit is modified to incorporate the results of that variance;
- c. There are additional revisions to be incorporated into the Permit which have not

been agreed to by EPA; or

- d. EPA learns of new information, including as the result of public comments, that causes EPA to reconsider its position.

Subject to the above conditions, the permit may be proposed in accordance with the Memorandum of Agreement and pursuant to the Clean Water Act.

When the Permit is available for public comment, please notify Julianne Socha of my staff by Email at socha.julianne@epa.gov. When the Proposed Permit is prepared, please forward one copy and any significant comments received during any public notice period to this office at the above address, attention Julianne Socha, Permits Branch. If you have any technical questions related to EPA's review, please contact Julianne Socha at 312-886-4436 or by Email at socha.julianne@epa.gov

Thank you for your cooperation during the review process and your thoughtful consideration of our comments.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Stephen M. Jann', with a stylized flourish at the end.

Stephen M. Jann, Chief
Permits Branch

Enclosure

Enclosure A

U.S. Environmental Protection Agency
Pre-public Notice NPDES General Permit Received November 1, 2019
Pre-public Notice Public Notice/Fact Sheet Received December 5, 2019
General Permit for Concentrated Animal Feeding Operations
Permit No. ILA01

Public Notice/Fact Sheet

1. 40 C.F.R. 124.8(b)(1)(2) requires that when applicable the fact sheet should include the type and quantity of wastes, fluids or pollutants. Because this is a general permit, facility specific information about the quantity of wastes, fluids or pollutants is not available for inclusion in the Public Notice/Fact Sheet, however, the State did include a discussion of pollutants that may be found in discharges authorized by the Permit. The State should consider including bacteria to this discussion.
2. 40 C.F.R. 124.8(b)(7) requires fact sheets to include the name and telephone number of a state contact person for the permit. 40 C.F.R. 124.10(d)(1)(iv) requires the name, address, and phone number for the state contact from whom interested persons may obtain more information. The State needs to add contact information for a state contact to the Public Notice/Fact Sheet, including an invitation inviting interested persons the opportunity to request further information.
3. EPA recommends the State review the Public Notice/Fact Sheet and Permit to ensure the classification of receiving waters, i.e., general use or secondary contact waters, is consistent in both documents.
4. Special Condition 3.b. of the Permit authorizes a discharge of stormwater from areas outside the production area. This authorized discharge should be identified and discussed in the Public Notice/Fact Sheet.
5. EPA recommends that the State include in the Public Notice/Fact Sheet that, in accordance with Special Conditions 3.d. and 3.b. of the Permit, the discharges authorized by the Permit cannot cause a water quality violation.

Permit

6. Special Condition 1 establishes application requirements for initial authorization under the Permit which differ from the application requirements for existing permitted discharges seeking coverage under a renewal of the Permit. The application process identified in the Permit for initial authorization and for existing permitted discharges should be the same. Special Condition 1 also sets forth four actions the State can take upon review of an application for initial authorization. The Permit does not set forth that the State can take these same four actions upon review of an application from an existing

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permitted CAFO.

7. Special Condition 1 provides that the State may provide public notice of proposed coverage under the Permit for initial authorization (emphasis added). The Permit does not impose a mandatory duty on the State to provide public notice of proposed coverage for initial authorization or existing permitted discharges seeking coverage under a renewal of the Permit. 35 Ill. Adm. Code 502.310 imposes a mandatory duty on the State to provide the required public notice. EPA recommends that the Permit include a statement that the public process for proposing coverage under the Permit will be in accordance with 35 Ill. Adm. Code 502.310.
8. Special Condition 3.a. authorizes a precipitation-caused overflow from containment areas or storage structures when other specified conditions of the Permit are met. One of the specified conditions is Special Condition 3.b. which, among other things, authorizes discharges of stormwater from areas outside the production area of the CAFO. Conditioning the authorized overflow upon discharges of stormwater is not consistent with the effluent limitations established in 35 Ill. Adm. Code Part 502 Subparts F, G, or H or the effluent limitations established in 40 C.F.R. Part 412. EPA recommends that the State move the production area design criteria from Special Condition 3.b. to Special Condition 3.a. and remove the reference to Special Condition 3.b. from Special Condition 3.a.
9. Special Condition 3.c. appears to address agricultural stormwater discharges. EPA recommends that this condition of the Permit use language consistent with 35 Ill. Adm. Code 502.102, 502.620(a), and 502.620(b). Precipitation-caused discharge of livestock waste from land application areas is an agricultural stormwater discharge only where the livestock waste has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients. This same comment applies to any discussion of agricultural stormwater discharges included in the Public Notice/Fact Sheet.
10. Special Condition 3.k. provides that a CAFO does not have to comply with the effluent limitation established in Special Condition 3.k. if the CAFO complies with an alternative discharge limitation. Since an alternative discharge limitation is a site-specific effluent limitation established by the State based on best management practices for the entire production area, EPA recommends that an alternative discharge limitation be established through an individual permit rather than a general permit. EPA recommends that the Limitations of Coverage section in Special Condition 1 of the Permit exclude new swine, poultry and veal CAFOs seeking an alternative discharge limitation.

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11. Special Condition 3.l. prohibits the discharge of livestock waste from a production area to a water of the United States except when the discharge is an overflow allowed in Special Conditions 3.a. and 3.k above. Special Condition 3.k. does not authorize an overflow, therefore, reference to 3.k. should be removed from Special Condition 3.l.
12. Special Condition 3.p. requires the permittee to determine whether additional or modified controls are necessary to ensure the permit is consistent with applicable wasteload allocations in approved Total Maximum Daily Loads (TMDLs). The Permit requires submission of this determination in the annual report required by Special Condition 9. In addition to submission in the annual report, such a determination should be submitted with any application for coverage under the Permit for consideration by the State in its decision to issue or deny coverage. The annual report should include any update to the initial determination.
13. Special Condition 4.f.xvi. requires that the nutrient management plan specify and demonstrate “best management practices for CAFOs subject to Special Condition 3 (p) and have open livestock storage structures exposed to precipitation or precipitation runoff.” EPA reads this permit condition to apply only if a CAFO meets both conditions, i.e., is subject to Special Condition 3.p. and has open storage structures. Best management practices should be included in the nutrient management plan for CAFOs that are subject to Special Condition 3.p., and for CAFOs that have open livestock waste storage structures. Inclusion of best management practices should not be dependent upon a CAFO meeting both conditions.
14. Special Condition 4.f.xvii. requires the nutrient management plan to identify specific records to document implementation and management of the elements described in Special Conditions 4.f.i. through 4.f.xvi. Special Condition 8 sets forth the records that the permittee must maintain. EPA recommends that Special Condition 8 include a requirement to maintain all records identified in Special Condition 4.f.xvii. to ensure that records not identified in Special Condition 8 that are identified in a nutrient management plan will be maintained.
15. Special Condition 3.b. authorizes the permittee to discharge stormwater from areas outside of the production area. Special Condition 1 requires submission of a Stormwater Pollution Prevention Plan (SWPPP) with an application for coverage under the Permit but does not require submission of any other information related to the discharge of stormwater in the application for coverage. Similar to identification of specific CAFO information required in an NOI, the Permit should identify information specific to discharges of stormwater that must be included in the NOI. Refer to Illinois EPA General NPDES Permit No. ILR00, Part D, for information typically required in an NOI submitted when an applicant is seeking coverage under a general permit authorizing

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discharges of stormwater associated with industrial activity. As previously mentioned, Special Condition 1 does require submission of a SWPPP with an application for coverage, however, the Permit only establishes broad requirements for the contents of the SWPPP, i.e., Special Condition 6 requires the SWPPP to include good housekeeping and preventive maintenance activities and monthly visual inspections. EPA recommends that the Permit include more specific expectations regarding the content of the SWPPP similar to Part E of Illinois EPA General NPDES Permit No. ILR00 or specify that guidance and templates available on Illinois EPA's website for stormwater discharges from industrial activity should be used to develop the SWPPP.

16. Special Condition 7.k. requires the permittee to ensure that land application equipment is properly calibrated on a routine basis. EPA recommends that the State define a specific frequency for calibration of land application equipment or include criteria the CAFO should use to determine the frequency of routine calibrations.
17. Special Condition 11 requires the permittee to obtain coverage under a NPDES permit for discharges of stormwater associated with construction activities. EPA recommends that the State review Special Condition 11 to ensure that this condition is consistent with the application requirements established in the Illinois EPA General NPDES Permit for Storm Water Discharges from Construction Site Activities, Permit No. ILR10, Part I, which would not preclude the operator from applying for coverage under Permit No. ILR10.
18. Special Condition 16 provides for a public process for substantial changes to nutrient management plans, however, Special Condition 16 does not provide any specifics regarding this process. EPA recommends that Special Condition 16 state that the public process will be in accordance with 35 Ill. Adm. Code 502.520(c). In addition to establishing actions the state must take for substantial changes to a nutrient management plan, 40 C.F.R. 122.42(e)(4) and 35 Ill. Adm. Code 502.520 establish actions the State must take for changes that are not substantial. Special Condition 16 does not address changes to the nutrient management plan that are not substantial. EPA recommends that Special Condition 16 either set forth the actions the State will take regarding changes that are not substantial or that the State will address changes that are not substantial in accordance with 35 Ill. Adm. Code 502.520.